

E-FILED ON JUNE 9, 2006

Annette W. Jarvis, Utah Bar No. 1649  
 RAY QUINNEY & NEBEKER P.C.  
 36 South State Street, Suite 1400  
 P.O. Box 45385  
 Salt Lake City, Utah 84145-0385  
 Telephone: (801) 532-1500  
 Facsimile: (801) 532-7543  
 Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)

and

Lenard E. Schwartz, Nevada Bar No. 0399  
 Jeanette E. McPherson, Nevada Bar No. 5423  
 SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Telephone: (702) 228-7590  
 Facsimile: (702) 892-0122  
 E-Mail: [bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

Date: OST Pending  
 Time: OST Pending

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**DEBTORS' APPLICATION FOR  
 ADMINISTRATIVE ORDER  
 ESTABLISHING PROCEDURES FOR  
 INTERIM COMPENSATION AND  
 REIMBURSEMENT OF EXPENSES OF  
 PROFESSIONALS**

**(AFFECTS ALL DEBTORS)**

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Tel: (702) 228-7590 · Fax: (702) 892-0122

USA Commercial Mortgage Company (“USA”), USA Securities, LLC, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, and USA Capital First Trust Deed Fund, LLC (collectively, the “Debtors”) hereby respectfully move this Court for entry of an order establishing a procedure for the payment of interim compensation and the reimbursement of expenses of certain professionals retained by the Debtors and the official committees in these jointly administered cases (the “Application”), and respectfully represent as follows:

## **I. FACTUAL BACKGROUND**

1. The Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code on April 13, 2006 (the “Petition Date”), which cases are being jointly administered as captioned above.

2. Prior to the Petition Date, USA was primarily in the business of originating, brokering and servicing commercial real estate loans and fractional interests therein.

3. Under prior management, pre-petition irregularities occurred in servicing the loans.

4. On the Petition Date, Thomas J. Allison of Mesirow Interim Financial Management became the President of USA and the Manager of the four remaining Debtors who are limited liability companies. Thereafter, the Court entered an order appointing Mr. Allison as the interim Chief Restructuring Officer of each of the Debtors.

5. No trustee or examiner has been appointed in these jointly administered cases.

6. The United States Trustee has appointed the following four committees for these cases: (1) the Official Committee of Unsecured Creditors of USA; (2) the Official Committee of Holders of Executory Contract Rights Through USA; (3) the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC; (4) the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (together, the “Committees”).

## **II. RETENTION OF PROFESSIONALS**

7. Mesirow Interim Financial Management (“Mesirow”) was retained by the Debtors to assist in the Debtors’ restructuring efforts. An order approving the Debtors’ interim retention of

1 Thomas J. Allison as Chief Restructuring Officer of the Debtors, and Mesirow as crisis managers  
 2 and temporary employees of the Debtors, was entered on April 19, 2006 (Dkt. #26). Mr. Allison  
 3 and various other Mesirow professionals are serving in various critical capacities for the Debtors  
 4 in analyzing and resolving the Debtors' pre-petition problems.

5 8. The Debtors' retention of Ray Quinney & Nebeker P.C. as their lead bankruptcy  
 6 counsel was approved pursuant to this Court's order entered on June 5, 2006 (Dkt. #474).

7 9. The Debtors' retention of the Schwartz & McPherson Law Firm as their local  
 8 counsel was approved pursuant to this Court's earlier order also entered on June 5, 2006 (Dkt.  
 9 #475).

10 10. Each of the Committees has filed applications with the Court seeking to retain  
 11 counsel pursuant to the Bankruptcy Code. The retention applications of two of the Committees  
 12 were granted by the Court at the June 5, 2006 hearing. The retention applications of the other two  
 13 Committees are pending.

14 11. Pursuant to Section 331 of the Bankruptcy Code, all case professionals are entitled  
 15 to submit applications for interim compensation and reimbursement of expenses every 120 days,  
 16 "or more often if the court permits."

### 17 **III. PROPOSED COMPENSATION AND DISBURSEMENT PROCEDURES**

18 12. The Debtors request that procedures for compensating and reimbursing  
 19 professionals on a monthly basis be established. The procedures proposed herein would allow  
 20 each professional retained (with Court approval) by the Debtors or a Committee (the  
 21 "Professionals") to present to the Debtors' counsel, the United States Trustee, and counsel for each  
 22 of the Committees (collectively, the "Reviewing Parties") a detailed statement of professional  
 23 services rendered and expenses incurred each month. If no timely objection is made by a  
 24 Reviewing Party, the Debtors would be authorized to make payments equal to eighty percent  
 25 (80%) of the amount of compensation requested for the month, with the remaining twenty percent  
 26 (20%) to be withheld (the "Holdback"), and one hundred percent (100%) of expenses requested  
 27 for the month. These payments, as well as the later payment of the Holdback, would be subject to  
 28 the Court's subsequent approval as part of the normal interim fee application process,

1 approximately every 120 days, and as part of the final fee application process after the conclusion  
2 of the cases.

3 13. The Debtors propose that the monthly payment of compensation and  
4 reimbursement of expenses of the Professionals be structured as follows:

5 a. On or about the 25<sup>th</sup> day of each month following the month for which  
6 compensation is sought, each Professional may submit a monthly statement (“Monthly  
7 Statement”) to each of the Reviewing Parties. Each of the Reviewing Parties will have  
8 until the fifteenth day of the next calendar month to review the Monthly Statement. If  
9 none of the Reviewing Parties objects as provided in paragraph (b) below, the Debtor shall  
10 promptly pay (to the extent funds are available in a court-approved budget) eighty percent  
11 (80%) of the compensation and one hundred percent (100%) of the expenses requested in  
12 that particular Monthly Statement.

13 b. In the event a Reviewing Party determines that the compensation or  
14 reimbursement sought in a particular Monthly Statement is inappropriate or unreasonable,  
15 or that the numbers and calculations are incorrect, such Reviewing Party, on or before the  
16 later of the tenth day of the next calendar month shall serve upon (i) the Professional  
17 whose statement is objected to, and (ii) the other Reviewing Parties, a “Notice of Objection  
18 to the Monthly Statement” setting forth the precise nature of the objection and the amount  
19 at issue. Thereafter, the objecting party of the Professional whose statement is objected to  
20 shall meet or confer to attempt to reach an agreement regarding the correct payment to be  
21 made. If an agreement cannot be reached or if no meeting or conference takes place, the  
22 Professional whose Monthly Statement is objected to shall have the option of: (i) filing the  
23 Monthly Statement, the Notice of Objection to the Monthly Statement and a request for  
24 payment with the Court, or (ii) forgoing payment of the disputed amount until the next  
25 interim fee application hearing, at which time the Court will consider and resolve the  
26 objection. The Debtor shall be required to pay promptly eighty percent (80%) of any  
27 portion of the compensation and one hundred percent (100%) of any portion of the  
28 expenses requested that are not the subject of a Notice of Objection to the Monthly

1 Statement. In addition, if an agreement is reached regarding an objection to a Monthly  
 2 Statement, the parties to the objection shall submit an explanation of the resolution to the  
 3 other Reviewing Parties. Following receipt of the explanation, the Debtor shall promptly  
 4 pay eighty percent (80%) of the undisputed compensation and one hundred percent (100%)  
 5 of undisputed expenses.

6 c. The first such Monthly Statement shall be submitted by each of the  
 7 Professionals on or about June 25, 2006 and shall cover the period from the  
 8 commencement of post-petition services through May 31, 2006.

9 d. Approximately every four (4) months (the "Fee Application Period"), each  
 10 of the Professionals shall file with the Court and serve on the Reviewing Parties on or  
 11 before the last day of the month following the last day of the period for which  
 12 compensation is sought, an application for interim approval and allowance, pursuant to  
 13 section 331 of the Bankruptcy Code, of the compensation, including the Holdback, and  
 14 reimbursement of expenses requested for the preceding four months (the "Fee  
 15 Application"); provided, however, that if a Plan is confirmed prior to the expiration of the  
 16 Fee Application Period, the Fee Application shall be filed no later than thirty (30) days  
 17 following confirmation of the Plan. If a particular Professional fails to file and serve an  
 18 interim fee application pursuant to this order, such Professional may not submit for  
 19 payment and the Debtor shall not pay future Monthly Statement until such Professional has  
 20 complied with the terms of these procedures. The first such Application shall be filed on  
 21 or before August 31, 2006 for the Fee Application Period ending July 31, 2006.

22 e. The pendency of a request for payment of a Monthly Statement to which an  
 23 objection has been made or an order of the Court that payment of compensation or  
 24 reimbursement of expenses was improper as to a particular Monthly Statement shall not  
 25 disqualify a Professional from the future payment or compensation or reimbursement of  
 26 expenses as set forth above.

27 f. Neither the payment of, nor the failure to pay, in whole or in part, monthly  
 28 interim compensation and reimbursement of expenses as provided herein shall bind any

1 party in interest or the Court with respect to the interim or final allowance of applications  
2 for compensation and reimbursement of expenses.

3 g. All proposed time periods set forth in this Application shall be calculated in  
4 accordance with Federal Rule of Bankruptcy Procedure 9006(a).

5 14. The Debtors also request that each member of the Committees be permitted to  
6 submit statements of expenses and supporting vouchers to the respective Committee's counsel,  
7 who will collect and submit such requests for reimbursement in accordance with the foregoing  
8 procedures.

9 15. The procedures outlined in this Application will enable all parties to monitor  
10 closely and more regularly the costs of administration, and enable the Debtors to maintain a level  
11 cash flow and implement efficient cash management procedures. Indeed, the Debtors will include  
12 all payments to Professionals on its monthly operating reports, detailed so as to state the amount  
13 paid to each of the Professionals.

#### 14 **IV. APPLICABLE LEGAL AUTHORITY**

15 16. Section 105(a) of the Bankruptcy Code provides that "[t]he Court may issue any  
16 order, process, or judgment that is necessary or appropriate to carry out the provisions of this  
17 title." 11 U.S.C. § 105(a). Section 331 of the Bankruptcy Code provides, in relevant part, as  
18 follows:

19 A trustee, an examiner, a debtor's attorney, or any professional person employed  
20 under section 327 or 1103 of this title may apply to the court not more than once  
21 every 120 days after an order for relief in a case under this title, or more often if the  
22 court permits, for such compensation for services rendered before the date of such  
provided under section 330 of this title.

23 11 U.S.C. § 331.

24 17. The Debtors request that a procedure of compensating and reimbursing  
25 professionals on a monthly basis be established, comparable to those established in other large  
26 Chapter 11 cases. *See, e.g., In re Knudsen*, 84 B.R. 668 (B.A.P. 9<sup>th</sup> Cir. 1988). In this way, the  
27 Court and all other parties can effectively monitor the fees incurred. The procedure requested  
28 would require interim fee applications to be filed every ninety (90) days, but would allow payment

1 on a monthly basis upon monthly billing statements to be provided to, and reviewed by, the  
2 Debtors, the Committees, and other designated parties.

3 **V. CONCLUSION**

4 Based upon the foregoing, the Debtors respectfully request entry of an order granting the  
5 relief requested herein and such other relief as this Court deems just and proper.

6 Respectfully submitted this 9<sup>th</sup> day of June, 2006.

7  
8 /s/ LENARD E. SCHWARTZER

9 Lenard E. Schwartzter, Nevada Bar No. 0399  
10 Jeanette E. McPherson, Nevada Bar No. 5423  
11 SCHWARTZER & MCPHERSON LAW FIRM  
12 2850 South Jones Boulevard, Suite 1  
13 Las Vegas, Nevada 89146

14 and

15 Annette W. Jarvis, Utah Bar No. 1649  
16 RAY QUINNEY & NEBEKER P.C.  
17 36 South State Street, Suite 1400  
18 P.O. Box 45385  
19 Salt Lake City, Utah 84145-0385  
20  
21  
22  
23  
24  
25  
26  
27  
28

SCHWARTZER & MCPHERSON LAW FIRM  
2850 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5308  
Tel: (702) 228-7590 · Fax: (702) 892-0122